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DIVISION II
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STATE OF WASHINGTON
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NO. 482746

**IN THE UNITED STATES COURT OF APPEALS
DIVISION II**

IN RE: THE DEPENDANCY OF:
H.N.S. – MINOR CHILD AND
B.N.S. – MINOR CHILD.

HAROLD "DAN" SHERWOOD
Petitioner/Appellant,
VS.

BEVERLY D. VAN SANTFORD
Respondent/Appellee.

Appeal from the Superior Court of Washington
In and for the County of Kitsap

RESPONDENT OPENING BRIEF

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I. Response to Appellant's Assignment of Error

The Kitsap County trial court properly modified the parenting plan and awarded custody of the children to Appellee Mother. The findings were supported by substantial evidence.

The trial court properly exercised its discretion and did not act in an untenable or manifestly unreasonable way. The trial court properly modified custody based on the provisions of RCW 26.09.260(1),(2) because the Custody Decree entered on May 5, 2009 with Nunc Pro Tunc on May 6, 2009 at Harvey, Kansas is detrimental to the children's physical, mental, or emotional health and the harm likely to be caused by a change in environment is outweighed by the advantage of a change to the children.

The Appellee Mother has been the primary residential parent since 12/2011. Furthermore, the finding in favor of Appellee Mother was proper because the Appellant Father failed to file a response to the Petition for Modification that was filed in Kitsap County on March 10, 2014 and cannot now raise new issues on appeal.

II. Issues Presented

- A. WHETHER THE TRIAL COURT PROPERLY APPLIED THE "BEST INTEREST" STANDARD FOR MODIFICATION OF A PARENTING PLAN WHEN MAKING A DETERMINATION ON THE APPELLEE MOTHER'S PETITION FOR MODIFICATION OF PARENTING PLAN FILED UNDER RCW 26.09.260?
- B. WHETHER THE TRIAL COURT PROPERLY DENIED THE APPELLANT FATHER'S MOTION FOR CONTINUANCE OF TRIAL WHEN THE FATHER DID NOT PROPERLY NOTE THE MOTION AND PROVIDED NO EVIDENCE THAT HE WOULD BE PREJUDICED IF THE CONTINUANCE WAS DENIED AND THERE WAS NO ABUSE OF DISCRETION?
- C. WHETHER PERMITTING APPELLEE MOTHER'S TESTIMONY WAS AN ABUSE OF DISCRETION?
- D. WHETHER THE COURT PROPERLY AWARDED ATTORNEY FEES TO COUNSEL FOR APPELLEE MOTHER?

III. Statement of the Case

This cause of action is based on a Petition for Modification of Parenting Plan filed by Respondent Mother in Kitsap County, Washington on March 10, 2014. CP 1-27.

The parties married on June 3, 2003. They divorced on May 5, 2009 in Harvey County, Kansas. The parties have two children in common, H.N.S. and B.N.S. who are currently THIRTEEN (13) years old. CP 1-27. At the time of the dissolution, Appellee Mother was the custodial parent under Kansas law. The Appellant Father was a local police officer in the town in which the parties resided.

In May 2009, the Appellee Mother notified the Appellant that she was relocating to Port Orchard, Washington and taking the children with her. The Appellant Father threatened her at gunpoint, indicating that he was keeping the children with him and that she had better not interfere with his plan. CP 82. Out of fear for her life and their children's life due to his threats, the Appellee Mother signed a parenting plan in May 2009 allowing the Appellant Father to have custody of the children. This parenting plan was entered into in Harvey County, Kansas in May 2009 and provided the Appellee Mother with visitation during the holidays and summer. CP 83. Thereafter the Appellee Mother has resided in Kitsap County, Washington.

During the Appellee Mother's visits, the children reported that their father had abused them. On May 15, 2010, the children reported being

punched in the face resulting in a bloody nose and being spanked for reporting abuse to their neighbors the month prior. They reported that their father had spanked them with his “cop belt” and yelled at them, called them names, and spit on them.

On May 21, 2010, the Appellee Mother filed a report with Child Protective Services in Kitsap County, Washington. On June 28, 2010, the Kitsap Sheriff’s Office took a report for possible sexual abuse by the Appellant Father against their son. In July 2010, the Appellee Mother filed a motion to receive residential custody of the children in Harvey County District Court in Kansas under the dissolution cause number: 09 DM 51. *See Appendix A.*

On December 26, 2011, the Appellee Mother flew to Kansas for visitation with the children. During the exchange and her time with the children, the father threatened her causing her to be fearful for her safety and for the safety of their children. CP 88-93.

On January 4, 2012, the Appellee Mother petitioned for and received a temporary Order for Protection from the Shawnee Superior Court in Kansas. On January 11, 2012, the Appellee Mother was granted a Final Order for Protection covering her and the children, that was then extended until January 24, 2014. The Appellant Father was subsequently arrested for indecent proposals to a child under the age of 16 and rape by instrumentation on March 14, 2012.

On March 10, 2014, the Appellee Mother filed a Petition for Modification of Parenting Plan and Motion to schedule a UCCJEA hearing in Kitsap County Superior Court. CP 1-27, 172-180. On April 30, 2014, an Agreed Order for Interstate Jurisdiction Contact with Kansas was filed, allowing Kitsap County Superior Court to make contact with the District Court of Allen County, Kansas for the purpose of determining jurisdiction over the children. At this point, neither party nor the children resided in Kansas.

On September 5, 2014, Appellant Father filed a Proposed Parenting Plan. *See Appendix B.* Under the terms of his proposal, Appellant Father proposed that Appellee Mother remain custodial parent and that the children remain living in Kitsap County, Washington. Appellant Father further proposed that his visitation with the children be supervised by the children's therapist and that it occur twice per week via telephone, skype, facetime, or mail. There is no record of Appellant Father's response to the Petition for Modification on the Kitsap County Clerk's Online Record's Access Program ("CORA") or the Washington Court Superior Court Case Summary.

On September 12, 2014, Kitsap County Superior Court assumed jurisdiction over the children. CP 189-190. On September 12, 2014, the parties entered an Agreed Order stipulating to Adequate Cause. Cp 191-192. On September 12, 2014, an order was entered directing the Appellant Father to communicate with the children's therapist to begin

reunification therapy and follow the therapist's recommendations. CP 193. A Guardian ad Litem was appointed on September 12, 2014. Unfortunately, due to the Appellant Father's refusal to contact the children's therapist, Lesa Swanson, there was no information to report to the Guardian ad Litem and the Guardian ad Litem was discharged on May 15, 2015.

Trial was scheduled for October 13, 2015. Appellee Mother and her counsel appeared at trial. Appellant Father did not appear personally, through counsel, or via telephone. After hearing testimony on October 13, 2015, the Trial Court entered a Final Parenting Plan, Order on Modification of Parenting Plan, Order on Modification of Support, Findings of Fact and Conclusions of Law on Modification of Parenting Plan, Findings of Fact and Conclusions of Law on Petition for Modification of Child Support, and Judgement on Attorney Fees. CP 220-248.

IV. Summary of Argument

- A. The Trial Court properly applied the "best interest standard" for modification of the Final Parenting Plan.
- B. The Trial Court properly denied Appellant Father's motion for continuance of trial.
- C. The Trial Court did not abuse its discretion when it permitted Appellee Mother to testify in trial.
- D. The Trial Court properly awarded attorney fees to Appellee Mother on the basis of Appellant Father's intransigence.

V. Argument

On appeal, the court should uphold a trial court's findings of fact in a modification proceeding if the finding is supported by substantial evidence, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true. *In re Marriage of Chua*, 149 Wn. App. 147, 154, 202 P.3d 367 (2009); *In re Marriage of Akon*, 160 Wn. App. 48, 57, 248 P.3d 94 (2011). That means that the court will look at the evidence and reasonable inferences therefrom in the light most favorable to the respondent. *Keever & Assocs., Inc. v. Randall*, 129 Wash. App. 733, 737, 119 P.3d 926 (2005).

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; [and] it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Fiorito*, 112 Wash. App. 657, 664, 50 P.3d 298 (2002).

A. THE TRIAL COURT PROPERLY APPLIED THE “BEST INTEREST” STANDARD FOR MODIFICATION OF A PARENTING PLAN WHEN MAKING A DETERMINATION ON THE APPELLEE MOTHER’S PETITION FOR MODIFICATION OF PARENTING PLAN FILED UNDER RCW 26.09.260.

Changes in custody are disruptive to children, so the courts generally opt for continuity and stability. A two-step process to modify

a parenting plan implements that policy. *In re Marriage of Zigler*, 154 Wn. App. 803, 809, 226 P.3d 202 (2010) (citing RCW 26.09.260, .270). Parenting plan modifications require a two-step process set out in RCW 26.09.260 and .270. First, a party moving to modify a parenting plan must produce an affidavit showing adequate cause for modification before the court will permit a full hearing on the matter. RCW 26.09.270. " [T]he information considered in deciding whether a hearing is warranted should be something that was not considered in the original parenting plan." *In re Parentage of Jannot*, 110 Wash.App. 16, 25, 37 P.3d 1265 (2002), *aff'd*, 149 Wash.2d 123, 65 P.3d 664 (2003).

If the moving party establishes adequate cause and the court holds a full hearing, the court may then modify the existing parenting plan if it finds that (1) a substantial change occurred in circumstances as they were previously known to the court, (2) the present arrangement is detrimental to the child's health, (3) modification is in the child's best interest, and (4) the change will be more helpful than harmful to the child. RCW 26.09.260(1), (2)(c).

The appellate court should not reverse a trial court's decision to modify a parenting plan under RCW 26.09.260 unless the trial court exercised its discretion in an untenable or manifestly unreasonable way. *Zigler*, 154 Wn. App. at 808.

Here, the parties stipulated to adequate cause to modify the previous parenting plan in an Agreed Order entered in Kitsap County,

Washington on September 12, 2014 pursuant to RCW 26.09.270. Once adequate cause was established, the trial court properly granted the Appellee Mother's Petition for Modification of Parenting Plan under RCW 26.09.260.

(1) There has been a substantial change in circumstances since the Parties entered the Custody Decree on May 5, 2009.

The Court determined that a substantial change in circumstances had occurred since the Custody Decree entered on May 5, 2009 with Nunc Pro Tunc on May 6, 2009 was entered at Harvey, Kansas. The Record indicates that the children had resided with the Appellee Mother since December 26, 2011, and that the children have resided in Kitsap County, Washington, with the mother since April 2012. CP 28-38, 66-171, 197-210.

The Petition for Modification of the Parenting Plan filed by Appellee Mother indicated that the change in circumstances involved the Appellant Father's abuse of the children, his failure to follow the judgment and decree by moving the children out of the State of Kansas without notice to Appellee Mother. CP 1-27.

Appellant Father's frequent loss of employment and subsequent moves to new cities and states qualifies as a substantial change in the Appellant Father's circumstances. CP 1-27.

Additionally, Appellant Father was investigated and charged in Pottawatomic County, Oklahoma with Lewd Acts to a Child Under 16,

Indecent Proposals to a Child Under 16, and Rape by Instrumentation. The case was dismissed on August 2, 2014 for lack of jurisdiction.

Appellant Father has been adjudicated to have committed acts of Domestic Violence sufficient for a permanent Order of Protection protecting Appellee Mother and the children, in Shawnee County, Kansas under Cause No. 12 D 29 *and* a permanent Order of Protection protecting his former fiancé, Stacy Butler, in Harvey County, Kansas entered in January 2012.

(2) The Custody Decree entered in Harvey, Kansas on May 5, 2009 is detrimental to the children.

The present environment under the 2009 Final Parenting Plan entered in Harvey County, Kansas is detrimental to the children's physical, mental, and emotional health and any harm caused by modification is outweighed by the advantage of the children remaining in the mother's primary care. Furthermore, the finding in favor of Appellee Mother was proper because the Appellant Father failed to file a response to the Petition for Modification that was filed in Kitsap County on March 10, 2014.

(a) The Custody Decree entered in Harvey, Kansas on May 5, 2009 is detrimental to the children's physical well-being.

Appellant Father neglected the children's medical and dental health.

In particular, the record indicates that B.N.S. had severe bowel issues when Appellee Mother was granted temporary custody of the children.

CP 102. H.N.S. had enamel worn off on her teeth due to acid coming up from her stomach. CP 102. H.N.S was put on medication to reduce the acid in her stomach after Appellee Mother was granted temporary custody and has greatly improved since. CP 103.

(b) *The Custody Decree entered in Harvey, Kansas on May 5, 2009 is detrimental to the children's mental and emotional health.*

Ms. Butler testified that Appellant Father made disparaging comments about Appellee Mother in front of the children. She testified that Appellant father called Appellee Mother a "whore" and told the children that Appellee Mother was "all about the dick". CP 159. Ms. Butler further testified that Appellant Father told the children that Appellee Mother "did not care about them" and that "she did not love them". CP 160.

Appellee Mother's mother, Dora Wiggins testified that she observed Appellant Father verbally abuse Appellee Mother's children. She testified that Appellant Father forced one of the children to stand outside in the cold and that he would belittle the child to the point of tears. CP 143.

(c) *The Custody Decree entered in Harvey, Kansas on May 5, 2009 is detrimental to the children's educational development.*

The record indicates that Appellant Father was in a relationship with Stacy Butler for 2.5 years. Appellant Father had a child with Ms. Butler. CP 147. During that time, Appellant Father moved the children from

Halstead, Kansas to Meeker, Oklahoma, then to Inola, Oklahoma, and finally to Moran, Kansas. CP 148. The children were transferred to new schools with each move, endangering the educational development of his special needs son, B.N.S.

In contrast, the record indicates that Appellee Mother enrolled the children at South Colby Elementary in 2012 where they attended until transitioning into junior high in 2014 and high school in 2016. B.N.S. has an IEP because of his speech and development and delays. CP 101. He had severe educational gaps from the frequent school change when he was in Appellant Father's care. CP 91.

(3) *The Modification is in the Best Interest of the Children.*

Parents have a fundamental liberty interest in the care, custody, and control of their children. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). Prevention of harm to children is a compelling state interest, and the State does have an obligation to intervene and protect a child when a parent's "actions or decisions seriously conflict with the physical or mental health of the child." *See In re Dependency of C.B.*, 79 Wash.App. 686, 690, 904 P.2d 1171 (1995); *see also In re Sumey*, 94 Wash.2d 757, 762, 621 P.2d 108 (1980). Limitations on fundamental rights are constitutional only if they are "reasonably necessary to accomplish the essential needs of the state." *State v. Riles*, 135 Wash.2d 326, 350, 957 P.2d 655 (1998).

The fundamental right to parent can be restricted by a condition of

a criminal sentence if the condition is reasonably necessary to prevent harm to the children. *State v. Letourneau*, 100 Wash. App. 424, 439, 997 P.2d 436 (2000). Generally, however, the criminal sentencing court is not the proper forum to address these legitimate concerns other than on a transitory basis. *State v. Ancira*, 107 Wn. App. 650, 27 P.3d 1246, 1249 (Div. 1 2001). This matter is best resolved by the family court in the dissolution proceeding or in a custody modification proceeding through restrictions on residential time.

RCW 26.09.191 sets forth both mandatory and discretionary restrictions on parenting plans. RCW 26.09.191(1) and (2) require the court to restrict a parent's contact and involvement with the child if the court finds that a parent has abandoned, neglected, or abused a child, or if the parent has a history of domestic violence, violent assault, or is an adjudicated sex offender. *In re Marriage of Watson*, 132 Wn. App. 232 (Div. 2 2006). RCW 26.50.010 defines Domestic Violence as physical bodily harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault between family or household members; sexual assault of one family or household member by another; or stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

In contrast, RCW 26.09.191(3)(d) confers discretion on the court to limit any provision of the parenting plan if the court finds that the parent's involvement or conduct may have an adverse effect on the

child's best interests and if any of several enumerated factors exist, including "[t]he absence or substantial impairment of emotional ties between the parent and the child." *Watson*, 132 Wn. App. 222.

(a) 191 Restrictions are dispositive of the children's residential schedule.

Here, the court properly imposed 191 Restrictions against Appellant Father under RCW 26.09.191(1) and (2) where the record indicates that Appellant Father willfully abandoned the children or has substantially refused to perform parenting functions; where the record contains substantial evidence that Appellant Father engaged in physical abuse, sexual abuse, or a pattern of emotion abuse of a child; and where there is substantial evidence that Appellant Father has a history of acts of domestic violence. These restrictions are dispositive of the children's residential schedule and result in mandatory restrictions on the Appellant Father's residential time with the children.

(i) There is substantial evidence that Appellant Father willfully abandoned the children or has substantially refused to perform parenting functions.

Here, substantial evidence supports finding willful abandonment and substantial refusal to perform parenting functions and the imposition of restrictions in the final parenting plan under RCW 26.09.191 (1)(a) and (2)(a)(i). Appellant Father has played no role in the lives of the children since December 26, 2011. He has shown no interest

in establishing a relationship with the children. Appellant Father had the ability to develop a relationship with the children through reunification therapy with the children. CP 193. Appellant Father non engaged in reunification therapy with Lesa Swanson or an alternative therapist.

(ii) There is substantial evidence that Appellant Father engaged in physical abuse, sexual abuse, or a pattern of emotional abuse of a child.

The children were both named as protected parties in a permanent Order of Protection from Abuse that was entered in Shawnee County, Kansas under Cause No. 12 D 29 in January 2012. The Order was extended to January 24, 2014. *See Appendix A.*

The children reported that “their dad had punched [B.N.S. in the nose and caused it to bleed because he was mad and H.N.S. had to clean up the blood.” CP 84-85.

Stacy Butler testified that Appellant Father was the primary disciplinarian. She testified that Appellant Father’s punishment was often excessive and bordered beating rather than a mere spank. Ms. Butler indicated that she witnessed the Appellant Father spank the children too hard several times a week. CP 156. Ms. Butler further indicated that she was afraid that if she did not do what Appellant Father told her to do, Appellant Father would throw something or redirect his anger at the children. CP 159.

Appellee Mother’s daughter, Katrina Hughes provided testimony related to Appellant Father’s strict discipline. She testified that it was

“hell” living in the household with Appellant Father. CP 127. She testified that Appellant Father would spank the children, ground the children to their rooms, and broke five (5) of her cell phones. CP 128. Ms. Hughes testified about the sexual abuse Appellant Father perpetrated on her when she was in seventh grade and living in Oklahoma with her mother (Appellee Mother) and stepfather (Appellant Father). *See (iii) infra*. Ms. Hughes testified that Appellant Father showed a clear preference toward her over the other children during the period of time that the sexual abuse occurred. CP 136. The behaviors to which Ms. Hughes testified appear to be grooming behaviors. Ms. Hughes testified that Appellant Father allowed her to select restaurants for the family to eat at and that Appellant Father purchased her expensive clothing from The Buckle and purchased clothing for her sister from Wal-Mart. CP 136.

(iii) There is substantial evidence that Appellant Father has a history of acts of Domestic Violence.

Appellee Mother testified about the history of domestic violence perpetrated by the Appellant Father. The record indicates that Appellant father had a pattern of threatening his current partner with physical harm and inflicting fear of imminent physical harm, bodily injury or assault. The Shawnee County, Kansas Court found that the Appellant Father committed acts of domestic violence when the court issued a permanent Order of Protection from Abuse under Cause Number 12 D 29 that was effective until January 11, 2013. The Court

found that Appellee Mother proved allegations of abuse by preponderance of the evidence. *See Appendix A.*

Ms. Butler also received a one-year permanent Order of Protection from Abuse protecting her from Appellee Father in Harvey County, Kansas in approximately January 2012. The Court found that Ms. Butler proved allegations of abuse by preponderance of the evidence.

Appellant Father has a history of sexual abuse of a household member. The sexual abuse to which Ms. Hughes testified in Kansas was the subject of the investigation and charges against Appellant Father in Pottawatomic County, Oklahoma for Lewd Acts to a Child Under 16, Indecent Proposals to a Child Under 16, and Rape by Instrumentation. Although the case was dismissed on August 2, 2014 for lack of jurisdiction, Ms. Hughes testified under oath about the sexual abuse. CP 130-138.

(b) Even if 191 Restrictions are not dispositive of the children's residential schedule, the Modification is still in the Best Interest of the Children Pursuant to the statutory criteria in RCW 26.09.187(3)(a).

Before crafting its own parenting plan, the trial court "shall consider" the enumerated factors in RCW 26.09.187(3)(a). See also *Jacobson v. Jacobson*, 90 Wn. App. 738, 743-45, 954 P.2d 297 (1998). However, RCW 26.09.187(3)(a) does not require the trial court to specifically list each factor in its ruling or to make a tailored finding as to each factor. *In re Marriage of Shui & Rose*, 132 Wn. App. 568, 591, 125 P.3d 180 (2005); see *Jacobson*, 90 Wn.App. at 742-43, 745-46; see

also In re Marriage of Brown, 47303-8-II (Division 2) September 20, 2016.

The Kitsap County Superior Court found that the Appellant Father's involvement or conduct may have an adverse effect on the children's best interests because of Appellant Father's neglect or substantial nonperformance of parenting functions, the absence or substantial impairment of emotional ties between Appellant Father and the children, and the abusive use of conflict by Appellant Father which creates the danger of serious damage to the children's psychological development. CP 222.

(4) the change will be more helpful than harmful to the child.

The record clearly indicates that mandatory restrictions under RCW 26.09.191(1) and (2)(a) are based on the court's specific findings of willful abandonment, neglect, and substantial refusal to perform parenting functions and substantial evidence that Appellant Father engaged in physical abuse, sexual abuse, or a pattern of emotional abuse of a child in addition to Appellant's adjudicated history of acts of domestic violence.

The children have resided with Appellee Mother in Washington since April 2012. The Final Parenting Plan and Final Orders entered in Kitsap County, Washington are far more helpful than harmful to the children.

B. THE TRIAL COURT PROPERLY DENIED THE APPELLANT FATHER'S MOTION FOR CONTINUANCE OF TRIAL BECAUSE THE FATHER DID NOT PROPERLY NOTE THE MOTION AND PROVIDED NO EVIDENCE THAT HE WOULD BE PREJUDICED IF THE CONTINUANCE WAS DENIED.

When a constitutional error is asserted for the first time on appeal, the court must first determine whether the error is truly of constitutional magnitude. After determining the error is of constitutional magnitude, the appellate court must determine whether the error was manifest. "Manifest" in RAP 2.5(a)(3) requires a showing of actual prejudice. *State v. McFarland*, 127 Wash.2d 322, 333-34, 899 P.2d 1251 (1995). To demonstrate actual prejudice, there must be a " 'plausible showing by the [appellant] that the asserted error had practical and identifiable consequences in the trial of the case.' " *State v. WWJ Corp.*, 138 Wash.2d 595, 603, 980 P.2d 1257 (1999) (quoting *State v. Lynn*, 67 Wash.App. 339, 345, 835 P.2d 251 (1992)). In determining whether the error's consequences were identifiable, the trial record must be sufficient to determine the merits of the claim. *McFarland*, 127 Wash.2d at 333, 899 P.2d 1251. " If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest." *Id.*

The grant or denial of a motion for a continuance will not be disturbed absent an abuse of discretion. *State v. Cannon*, 130 Wash.2d

313, 326, 922 P.2d 1293 (1996) (quoting *State v. Silva*, 72 Wash. App. 80, 83, 863 P.2d 597 (1993)).

(1) *Any Error is not of Constitutional Magnitude.*

Appellant Father has not Identified a constitutional error. He has not shown how, in the context of trial, the alleged error actually affected the Appellant Father's rights. Appellant Father neglected to properly note the motion to continue trial in Kitsap County. Appellant Father did not appear personally or telephonically at trial.

(2) *Any Error is not Manifest.*

Appellant Father has not alleged facts necessary to adjudicate the claimed error. Therefore, no actual prejudice has been shown and the error is not manifest.

Even if Appellant Father has alleged facts on appeal necessary to adjudicate the claimed error, Appellant Father is unable to make a plausible showing by the [appellant] that the asserted error had practical and identifiable consequences in the modification trial. Specifically, even if the Appellant Father had been granted the continuance, his residential time with the children still would have been limited under RCW 26.09.191 because the Appellant Father had been adjudicated to have perpetrated acts of domestic violence. *See A(3)(a)(iii), supra.*

The trial court's denial of Appellant Father's request for continuance is not outside the range of acceptable choices, given the facts and the applicable legal standard. The trial court's denial of

Appellant Father's request for continuance is not based on untenable grounds. Rather, the trial court's decision is supported by the record.

C. PERMITTING APPELLEE MOTHER'S TESTIMONY WAS NOT AN ABUSE OF DISCRETION.

The appellate court should defer to the fact finder on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. *In re Parentage of J.H.*, 112 Wn. App. 486, 493 n.1, 49 P.3d 154 (2002).

Appellee Mother's testimony was proper before the trial court. The trial court had the ability to hear Appellee Mother's testimony, review evidence presented, hear argument, and assess Appellee Mother's credibility, and the persuasiveness of the evidence presented. Washington Statute requires that Appellant Father's residential time with the children be limited due to the finding of domestic violence after adjudication in Kansas. *See A(3)(a)(iii)*, *supra*.

D. THE COURT PROPERLY AWARDED ATTORNEY FEES TO COUNSEL FOR APPELLEE MOTHER.

Appellant Father has not alleged facts necessary to adjudicate the claimed error. Therefore, no actual prejudice has been shown and the error is not manifest.

Even if the Appellant Father subsequently alleges facts necessary to adjudicate the claimed error, there is no showing that the trial court's decision to award fees on the basis of Appellant Father's intransigence is

not outside the range of acceptable choices, given the facts and the applicable legal standard. The trial court's decision to award fees in favor of Appellee Mother was not based on untenable grounds because the factual findings are supported by the record and the decision was based on the correct standard and the facts met the requirements of the correct standard.

VI. Request for Attorney Fees

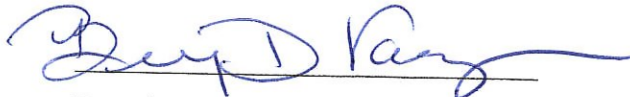
Appellee Mother respectfully requests the court award reasonable attorney fees for the cost of defending this action.

VII. Conclusion

For the aforementioned reasons, Appellee Mother respectfully requests that this court deny Appellant Father's appeal and affirm the Kitsap County Trial Court's decision in this matter and award attorney's fees and costs.

DATED the 4th day of October, 2016.

RESPECTFULLY SUBMITTED,

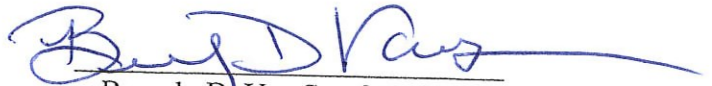


Beverly D. Van Santford, Pro Se
PO Box 4351
South Colby, WA 98384

Certificate of Service

I hereby certify that on October 4, 2016, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals Division II and Certified mailed a copy to the Petitioner/Appellant:

Harold Dan Sherwood
26 W. Village Circle
Davenport, IA 52806



Beverly D. Van Santford, Pro Se
Respondent/Appellee

Oct. 4, 2016

Dated

APPENDIX A

IN THE DISTRICT COURT OF Shawnee COUNTY, KANSAS
Protection from Abuse (K.S.A. 60-3101 et seq.)

Amended
Final Order of Protection from Abuse

FILED
FEB -1 P 3 28

Judge or Division:	Case Number: <u>12 D 29</u>																														
	Court ORI Number:																														
Plaintiff: <u>Beverly Van Santford</u>	Plaintiff Identifiers:																														
Relationship to Defendant: <input type="checkbox"/> are or <input type="checkbox"/> have been in a dating relationship <input type="checkbox"/> reside together or <input type="checkbox"/> formerly resided together <input type="checkbox"/> have a child in common	Year of Birth _____ Sex: <input checked="" type="checkbox"/> F <input type="checkbox"/> M																														
vs.	(Date File Stamp)																														
Defendant: <u>Harold D. Sherwood</u>	Defendant Identifiers:																														
Address _____ _____ _____	<table border="1" style="width:100%"><tr><td>SEX</td><td>RACE</td><td>YOB</td><td>HT</td><td>WT</td></tr><tr><td>M</td><td>I</td><td>9-20-77</td><td></td><td></td></tr><tr><td>HAIR</td><td>EYES</td><td colspan="3">LAST 4 DIGITS OF SSN</td></tr><tr><td></td><td></td><td colspan="3"></td></tr><tr><td colspan="2">DL LICENSE #</td><td>DL STATE</td><td colspan="2">DL EXP. DATE</td></tr><tr><td colspan="2"></td><td></td><td colspan="2"></td></tr></table>	SEX	RACE	YOB	HT	WT	M	I	9-20-77			HAIR	EYES	LAST 4 DIGITS OF SSN								DL LICENSE #		DL STATE	DL EXP. DATE						
SEX	RACE	YOB	HT	WT																											
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HAIR	EYES	LAST 4 DIGITS OF SSN																													
DL LICENSE #		DL STATE	DL EXP. DATE																												
Appearances: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Defendant Fails to Appear <u>MB</u> <input checked="" type="checkbox"/> Plaintiff's Attorney <input type="checkbox"/> Defendant's Attorney <input type="checkbox"/> Other _____																															
Protected Person(s): <u>MB</u> <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Plaintiff's child(ren) <input type="checkbox"/> Minor child(ren) residing with the plaintiff (Only the party, or parties, initialed by the judge are protected person(s).)																															
This order and its terms are directed at and apply to Defendant only. (This form shall not be used for Mutual Protection from Abuse Orders.)																															
This order shall be effective until: <u>JANUARY 24</u> , 20 <u>14</u> . ONLY THE COURT CAN CHANGE THIS ORDER.																															
The Court Finds: (Only the provision(s) initialed by the judge apply.) <u>MB</u> Plaintiff filed a written verified petition on <u>JAN 4</u> , 20 <u>12</u> , requesting an Order of Protection from Abuse. Prior to this hearing, Defendant was given reasonable notice of the date set for the hearing, together with a copy of the petition and any ex parte order of protection from abuse, by personal service on <u>JAN 6</u> , 20 <u>12</u> . <u>MB</u> This court has jurisdiction over Plaintiff, Defendant and subject matter. <u>MB</u> This court has child custody jurisdiction because <input type="checkbox"/> it is home state, <input type="checkbox"/> there is no home state and Kansas has significant connections with the child(ren), <input type="checkbox"/> temporary emergency jurisdiction, <input type="checkbox"/> other: _____ The matter was heard and submitted to the court which finds that Plaintiff has proved the allegations of abuse by the preponderance of the evidence as required by K.S.A. 60-3107. The plaintiff's <input type="checkbox"/> address and <input type="checkbox"/> telephone number shall remain confidential for the protection of the protected person(s).																															

Order

The Court Orders:

- This Final Order of Protection from Abuse replaces any previous Temporary Order of Protection from Abuse entered by the court and serves as notice of termination of that order upon service of this final order on the defendant.
- The defendant shall not abuse, molest, or interfere with the privacy or rights of the protected person(s) wherever they may be. [NCIC 01 & 02]
- The defendant shall not use, attempt to use, or threaten to use physical force that would reasonably be expected to cause bodily injury against the protected person(s). [NCIC 01 & 02]
- The defendant shall not contact the protected person(s), either directly or indirectly, except as authorized by the court in paragraph 8(b) of this order. [NCIC 04 & 05]
- The defendant shall not direct or request another to contact the protected person(s), either directly or indirectly, except as authorized by the court in paragraph 8(b) of this order. [NCIC 04 & 05]
- The defendant shall not enter or come on or around the premises, the residence or workplace where the protected person(s) resides, stays or works. [NCIC 04]
- Law enforcement officers are directed to grant any assistance necessary to protect the protected person(s) from abuse by the defendant and to provide any other assistance necessary to enforce these orders, including the order excluding the defendant from the protected person(s) place of residence wherever it may be. [NCIC 08]

CERTIFICATE OF COMPLIANCE WITH THE VIOLENCE AGAINST WOMEN ACT (VAWA): This Order meets all the requirements of the Violence Against Women Act, 18 U.S.C. § 2265. This Court has jurisdiction of the parties and the subject matter; the defendant has been afforded notice and a timely opportunity to be heard as provided by the laws of Kansas. This Order is enforceable in all 50 states, the District of Columbia, all Indian tribal courts and all United States territories and shall be enforced as if it were an order of that jurisdiction pursuant to 18 U.S.C. § 2265.

Additional terms of this order are set forth below. (Only the provision(s) initialed by the judge apply.)

Housing and Property: (If the parties to this action are not married to each other and one party owns the residence or household, the court shall not grant possession of the residence or household to the exclusion of the party who owns it. K.S.A. 60-3107(d). The Protection from Abuse Act does not prohibit granting possession of a leasehold to either party.)

1. Defendant owns the residence in which Plaintiff and Defendant lived together and Plaintiff and Defendant are not married to each other so the court cannot grant Plaintiff possession of the residence. Defendant is not excluded from that residence, but has an exclusive right to possession of that residence under K.S.A 60-3107(d). Defendant is entitled to the return of any means of access to that residence including residence keys and garage door openers. Plaintiff may remove the following items _____ [NCIC 08]
2. Defendant shall provide suitable alternate housing for the plaintiff and/or the minor child(ren) by paying rent in the amount of \$ _____ per _____ to _____, with the first payment due _____ (date), or as follows: _____
3. Plaintiff is granted exclusive possession of the residence located at: _____ [NCIC 03]
The defendant shall immediately move from the residence and may take only personal effects and clothing for Defendant and any child(ren) in the defendant's custody. Law enforcement officials are directed to enter the residence with Defendant to prevent abuse from occurring while Defendant is present to remove those personal effects and clothing. When the defendant has finished removing those items, law enforcement officials shall remove Defendant from the residence, and ensure that Defendant does not enter or re-enter the premises or any other residence that Plaintiff may occupy. [NCIC 08]
4. Defendant shall not cancel any utilities to the residence granted to Plaintiff. The terms of this paragraph expire 60 days from this order's date of entry. [NCIC 08]
5. Defendant shall immediately surrender to the plaintiff the following items: [NCIC 08]
 - ☐ The garage door opener for the residence;
 - ☐ All keys to the residence;
 - ☐ Mailbox keys;
 - ☐ Keys to the _____ automobile(s);
 - ☐ Other: _____
6. The personal property of the parties is divided as follows: _____

Law enforcement officers are directed to assist in securing possession of the personal property as described above.
[NCIC 08]

Parentage, Support and Custody:

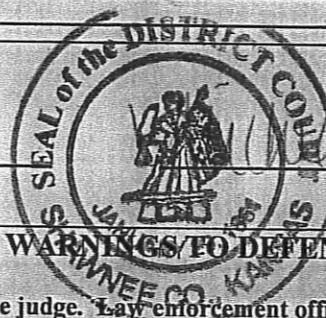
7. Defendant shall pay spousal support to the plaintiff in the amount of \$ _____ each month for the duration of this order, with the first payment due _____ (date).
8. For this paragraph, the court shall initial subparagraph (a), OR subparagraph (b), but not both.
- a. Defendant's parentage of the child(ren) has not been established through a marriage of the parties or pursuant to the Kansas Parentage Act, K.S.A. 23-2201 *et seq.*, and Defendant has no right to custody or parenting time with the following named child(ren): _____ [NCIC 09]
- b. Defendant's parentage of the child(ren) has been established through the marriage of the parties or pursuant to the Kansas Parentage Act, K.S.A. 23-2201 *et seq.*, and the following custody and parenting time orders are entered:
- i. Temporary legal custody and residency of the following named minor child(ren): _____
- shall be: ☐ Joint legal custody between the plaintiff and defendant until this order expires [NCIC 06]; or,
☐ Sole legal custody granted to ☐ Plaintiff [NCIC 09] ☐ Defendant [NCIC 06] until this order expires.
- ii. Rights of temporary parenting time shall be as follows:
- ☐ Plaintiff and Defendant shall have parenting time as described in the attached parenting plan [NCIC 06];
☐ Defendant shall have no parenting time [NCIC 09];
☐ Defendant shall have supervised parenting time as follows: _____ [NCIC 06 & 08];
☐ Plaintiff and Defendant shall exchange the minor child(ren) for parenting time at: _____ [NCIC 08]
9. Defendant is the presumed or established parent and child support is ordered in accordance with the attached Child Support Addendum.

Other Provisions:

10. Defendant shall seek counseling to aid in the cessation of abuse.
11. Defendant shall pay the following attorney fees and costs: \$ _____
12. Other orders necessary to promote the safety of the protected person(s): [NCIC 08]
- ☐ Defendant shall surrender any firearms to _____ [NCIC 07]
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

SO ORDERED:

1/24/13
Date



Judge of the District Court

WARNINGS TO DEFENDANT

- This order is effective when signed by the judge. Law enforcement officials shall immediately enforce this order.
- Violation of this order may constitute: violation of a protective order as provided in K.S.A. 21-5924, and amendments thereto; assault as provided in K.S.A. 21-5412(a), and amendments thereto; battery as provided in K.S.A. 21-5413(a), and amendments thereto; and domestic battery as provided in K.S.A. 21-5414, and amendments thereto, and may result in prosecution and conviction under Kansas criminal statutes.
- If possession of the residence is granted to the plaintiff, violation of this order by the defendant constitutes criminal trespass pursuant to K.S.A. 21-5808(a)(1)(C), and amendments thereto, and may result in prosecution and conviction under Kansas criminal statutes.
- Violation of this order may also be punishable as contempt of this court.
- If the defendant has a concealed carry license, that license is subject to revocation pursuant to K.S.A. 75-7c07, and amendments thereto. After a defendant's concealed carry license has been revoked, continuing to carry a concealed weapon may constitute a violation of K.S.A. 21-6302, and amendments thereto.
- This protection order may subject the defendant to federal firearms restrictions under 18 U.S.C. § 922(g)(8), and violation of this order may subject the defendant to prosecution for such federal crimes, including but not limited to: Firearms possession; Interstate travel to commit domestic violence; Interstate stalking; and Interstate violation of a protection order.

Notice of Extension of this Final Order

(Pursuant to K.S.A. 60-3107)

This Final Order of Protection from Abuse may be extended for additional periods of time upon motion of the plaintiff.

Violation of this order could result in the order being extended for up to the lifetime of the defendant.

IN THE DISTRICT COURT OF Shawnee COUNTY, KANSAS
Protection from Abuse (K.S.A. 60-3101 et seq.)

Final Order of Protection from Abuse

Judge or Division: <u>Schmidt</u>	Case Number: <u>12 D 29</u> Court ORI Number:																														
Plaintiff: <div style="border: 1px solid black; padding: 2px; display: inline-block;"><u>Norothy S. Wood</u></div> Relationship to Defendant: <input type="checkbox"/> are or <input type="checkbox"/> have been in a dating relationship <input type="checkbox"/> reside together or <input type="checkbox"/> formerly resided together <input type="checkbox"/> have a child in common	Plaintiff Identifiers: Year of Birth <div style="border: 1px solid black; padding: 2px; display: inline-block;"><u>3/4/67</u></div> Sex: <input checked="" type="checkbox"/> F <input type="checkbox"/> M																														
(Date File Stamp)																															
vs. Defendant: <div style="border: 1px solid black; padding: 2px; display: inline-block;"><u>Harold Theriault</u></div> Address _____ _____ _____	Defendant Identifiers: <table border="1" style="width: 100%; border-collapse: collapse;"><tr><td>SEX</td><td>RACE</td><td>YOB</td><td>HT</td><td>WT</td></tr><tr><td><u>M</u></td><td><u>WH</u></td><td><u>3/20/77</u></td><td><u>1.7</u></td><td><u>950</u></td></tr><tr><td>HAIR</td><td>EYES</td><td colspan="3">LAST 4 DIGITS OF SSN (IF KNOWN)</td></tr><tr><td><u>BR</u></td><td><u>BL</u></td><td colspan="3"></td></tr><tr><td colspan="2">DRIVERS LICENSE #</td><td>DL STATE</td><td colspan="2">DL EXP. DATE</td></tr><tr><td colspan="2"></td><td></td><td colspan="2"></td></tr></table>	SEX	RACE	YOB	HT	WT	<u>M</u>	<u>WH</u>	<u>3/20/77</u>	<u>1.7</u>	<u>950</u>	HAIR	EYES	LAST 4 DIGITS OF SSN (IF KNOWN)			<u>BR</u>	<u>BL</u>				DRIVERS LICENSE #		DL STATE	DL EXP. DATE						
SEX	RACE	YOB	HT	WT																											
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DRIVERS LICENSE #		DL STATE	DL EXP. DATE																												
Appearances: <input checked="" type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Defendant Fails to Appear <input checked="" type="checkbox"/> Plaintiff's Attorney <input checked="" type="checkbox"/> Defendant's Attorney <input type="checkbox"/> Other _____																															
Protected Person(s): <u>Plaintiff</u> <u>Plaintiff's child(ren)</u> _____ Minor child(ren) residing with the Plaintiff (Only the party, or parties, initialed by the Judge are protected person(s).)																															
This order and its terms are directed at and apply to Defendant only. (This form shall not be used for Mutual Protection from Abuse Orders.)																															
This order shall be effective until: <u>1/11</u> , 20 <u>12</u> . ONLY THE COURT CAN CHANGE THIS ORDER.																															
The Court finds: (Only the provision(s) initialed by the Judge apply.) <u>THL</u> Plaintiff filed a written verified petition on <u>1/4</u> , 20 <u>12</u> requesting an Order of Protection from Abuse. Prior to this hearing, Defendant was given reasonable notice of the date set for the hearing, together with a copy of the petition and any Ex Parte Order of Protection from Abuse, by personal service on _____, 20____. <u>THL</u> This Court has jurisdiction over Plaintiff, Defendant and subject matter. <u>THL</u> This Court has child custody jurisdiction because <input checked="" type="checkbox"/> it is home state, <input type="checkbox"/> there is no home state and Kansas has significant connections with the child(ren), <input type="checkbox"/> temporary emergency jurisdiction, <input type="checkbox"/> other: _____ <u>THL</u> The matter was heard and submitted to the Court which finds that Plaintiff has proved the allegations of abuse by the preponderance of the evidence as required by K.S.A. 60-3107. _____ The plaintiff's <input type="checkbox"/> address and <input type="checkbox"/> telephone number shall remain confidential for the protection of the protected person(s).																															

Order

The Court orders:

- This final order of protection from abuse replaces any previous temporary order of protection from abuse entered by the Court and serves as notice of termination of that order upon service of this final order on the defendant.
- The defendant shall not abuse, molest, or interfere with the privacy or rights of the protected person(s) wherever they may be. [NCIC 01 & 02]
- The defendant shall not use, attempt to use, or threaten to use physical force, that would reasonably be expected to cause bodily injury, against the protected person(s). [NCIC 01 & 02]
- The defendant shall not contact the protected person(s), either directly or indirectly, except as authorized by the Court in paragraph 8(b) of this order. [NCIC 04 & 05]
- The defendant shall not direct or request another to contact the protected person(s), either directly or indirectly, except as authorized by the Court in paragraph 8(b) of this order. [NCIC 04 & 05]
- The defendant shall not enter or come on or around the premises, the residence or workplace where the protected person(s) resides, stays or works. [NCIC 04]
- Law enforcement officers are directed to grant any assistance necessary to protect the protected person(s) from abuse by the defendant, and to provide any other assistance necessary to enforce these orders, including the order excluding the defendant from the protected person(s) place of residence, wherever it may be. [NCIC 08]

CERTIFICATE OF COMPLIANCE WITH THE VIOLENCE AGAINST WOMEN ACT (VAWA): This Order meets all the requirements of the Violence Against Women Act, 18 U.S.C. § 2265. This Court has jurisdiction of the parties and the subject matter; the defendant has been afforded notice and a timely opportunity to be heard as provided by the laws of Kansas. This Order is enforceable in all 50 states, the District of Columbia, all Indian tribal courts and all United States territories and shall be enforced as if it were an order of that jurisdiction pursuant to 18 U.S.C. § 2265.

Additional terms of this order are set forth below. (Only the provision(s) initialed by the Judge apply.)

Housing and Property: (If the parties to this action are not married to each other and one party owns the residence or household, the court shall not grant possession of the residence or household to the exclusion of the party who owns it. K.S.A. 60-3107(d). The Protection from Abuse Act does not prohibit granting possession of a leasehold to either party.)

1. Defendant owns the residence in which Plaintiff and Defendant lived together and Plaintiff and Defendant are not married to each other so the Court cannot grant Plaintiff possession of the residence. Defendant is not excluded from that residence, but has an exclusive right to possession of that residence under K.S.A 60-3107(d). Defendant is entitled to the return of any means of access to that residence including residence keys and garage door openers. Plaintiff may remove the following items _____ [NCIC 08]
2. Defendant shall provide suitable alternate housing for the plaintiff and/or the minor child(ren) by paying rent in the amount of \$ _____ per _____ to _____, with the first payment due _____ (date), or as follows: _____
3. Plaintiff is granted exclusive possession of the residence located at: _____ [NCIC 03]
The Defendant shall immediately move from the residence and may take only personal effects and clothing for Defendant and any child(ren) in the Defendant's custody. Law enforcement officials are directed to enter the residence with Defendant to prevent abuse from occurring while Defendant is present to remove those personal effects and clothing. When the Defendant has finished removing those items, law enforcement officials shall remove Defendant from the residence, and ensure that Defendant does not enter or re-enter the premises or any other residence that Plaintiff may occupy. [NCIC 08]
4. Defendant shall not cancel any utilities to the residence granted to Plaintiff. The terms of this paragraph expire 60 days from this order's date of entry. [NCIC 08]
5. Defendant shall immediately surrender to the plaintiff the following items: [NCIC 08]
 - ☐ The garage door opener for the residence;
 - ☐ All keys to the residence;
 - ☐ Mailbox keys;
 - ☐ Keys to the _____ automobile(s);
 - ☐ Other: _____
6. The personal property of the parties is divided as follows: _____

Law enforcement officers are directed to assist in securing possession of the personal property as described above.
[NCIC 08]

Parentage, Support and Custody:

7. Defendant shall pay spousal support to the plaintiff in the amount of \$ _____ each month for the duration of this order, with the first payment due _____ (date).
8. For this paragraph, the Court shall initial subparagraph (a) OR subparagraph (b), but not both.
- a. Defendant's parentage of the child(ren) **has not** been established through a marriage of the parties or pursuant to the Kansas Parentage Act, K.S.A. 38-1110 *et seq.*, and Defendant has no right to custody or parenting time with the following named child(ren): _____ [NCIC 09]
- b. Defendant's parentage of the child(ren) **has been** established through the marriage of the parties or pursuant to the Kansas Parentage Act, K.S.A. 38-1110 *et seq.*, and the following custody and parenting time orders are entered:
- i. Temporary legal custody and residency of the following named minor child(ren): _____
- shall be: ☒ Joint legal custody between the plaintiff and defendant until this order expires [NCIC 06]; or,
☐ Sole legal custody granted to ☐ Plaintiff [NCIC 09], ☐ Defendant [NCIC 06] until this order expires.
- ii. Rights of temporary parenting time shall be as follows:
- ☐ Plaintiff and Defendant shall have parenting time as described in the attached parenting plan [NCIC 06];
- ☐ Defendant shall have no parenting time [NCIC 09];
- ☒ Defendant shall have supervised parenting time as follows: through TREC
at the residence of the plaintiff [NCIC 06 & 08];
- ☐ Plaintiff and Defendant shall exchange the minor child(ren) for parenting time at: _____ [NCIC 08]
9. Defendant is the presumed or established parent and child support is ordered in accordance with the attached Child Support Addendum.

Other Provisions:

10. Defendant shall seek counseling to aid in the cessation of abuse.
11. Defendant shall pay the following attorney fees and costs: \$ _____
12. Other orders necessary to promote the safety of the protected person(s): [NCIC 08]
- ☐ Defendant shall surrender any firearms to _____ [NCIC 07]
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

SO ORDERED:

1/11/12
Date

[Signature]
Judge of the District Court

WARNINGS TO DEFENDANT

- This order is effective when signed by the Judge. Law enforcement officials shall immediately enforce this order.
- Violation of this order may constitute: violation of a protective order as provided in K.S.A. 21-3843, and amendments thereto; assault as provided in K.S.A. 21-3408, and amendments thereto; battery as provided in K.S.A. 21-3412, and amendments thereto; and domestic battery as provided in K.S.A. 21-3412a, and amendments thereto, and may result in prosecution and conviction under Kansas criminal statutes.
- If possession of the residence is granted to the plaintiff, violation of this order by the defendant constitutes criminal trespass pursuant to K.S.A. 21-3721, and amendments thereto, and may result in prosecution and conviction under Kansas criminal statutes.
- Violation of this order may also be punishable as contempt of this Court.
- If the defendant has a concealed carry license, that license is subject to revocation pursuant to K.S.A. 75-7c07, and amendments thereto. After a defendant's concealed carry license has been revoked, continuing to carry a concealed weapon may constitute a violation of K.S.A. 21-4201, and amendments thereto.
- This protection order may subject the defendant to federal firearms restrictions under 18 U.S.C. § 922(g)(8), and violation of this order may subject the defendant to prosecution for such federal crimes, including but not limited to: Firearms possession; Interstate travel to commit domestic violence; Interstate stalking; and Interstate violation of a protection order.

Notice of Extension of this Final Order
(Pursuant to K.S.A. 60-3107)

This Final Order of Protection from Abuse may be extended for additional periods of time upon motion of the Plaintiff.

STATE OF KANSAS, COUNTY OF SHAWNEE, SS.
I hereby certify the above and foregoing to be
a true and correct copy, the original of which
is filed and entered of record in the court.

Dated 1/11/12
CLERK of the DISTRICT COURT
By [Signature]

DEPUTY

APPENDIX B

FILED
KITSAP COUNTY CLERK

2014 SEP -5 AM 9:10

DAVID W. PETERSON

Superior Court of Washington
County KITSAP

In re the Marriage of:

BEVERLY DARLENE VAN SANTFORD

Petitioner,

and

DAN SHERWOOD

Respondent.

No. 14-3-00303-5

Parenting Plan
Proposed (PPP)
Temporary (PPT)

This parenting plan is proposed by HAROLD DAN SHERWOOD.

It Is Ordered, Adjudged and Decreed:

I. General Information

This parenting plan applies to the following children:

Name	Age
Heather Nicole Sherwood	10
Brandon Nicolas Sherwood	10

II. Basis for Restrictions

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the children and the right to make decisions for the children.

Parenting Plan (PPP, PPT, PP) Page 1 of 9
WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.181; .187; .194

Law Office of
Kimberly S. Hammit, PLLC

19717 Front Street * PO Box 2520
Poulsbo, WA 98370
Phone (360) 626-0221 *Fax (360) 205-0691



1
2 **2.1 Parental Conduct (RCW 26.09.191(1), (2))**

3 Does not apply.

4 **2.2 Other Factors (RCW 26.09.191(3))**

5 Does not apply.

6
7 **III. Residential Schedule**

8 *The residential schedule must set forth where the children shall reside each day of the year,*
9 *including provisions for holidays, birthdays of family members, vacations, and other special*
10 *occasions, and what contact the children shall have with each parent. Parents are encouraged*
11 *to create a residential schedule that meets the developmental needs of the children and*
12 *individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your*
13 *residential schedule. If you do not use these paragraphs, write in your own schedule in*
14 *Paragraph 3.13.*

15 **3.1 Schedule for Children Under School Age**

16 There are no children under school age.

17 **3.2 School Schedule**

18 Upon enrollment in school, the children shall reside with the petitioner, except for the
19 following days and times when the children will reside with or be with the other parent:

20 SEE PARAGRAPH 3.13.

21 **3.3 Schedule for Winter Vacation**

22 The children shall reside with the petitioner during winter vacation, except for the
23 following days and times when the children will reside with or be with the other parent:

24 RESERVED.

25 **3.4 Schedule for Other School Breaks**

The children shall reside with the petitioner during other school breaks, except for the
following days and times when the children will reside with or be with the other parent:

RESERVED.

3.5 Summer Schedule

Parenting Plan (PPP, PPT, PP) Page 2 of 9
WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.181; .187; .194

Law Office of
Kimberly S. Hammit, PLLC
19717 Front Street * PO Box 2520
Poulsbo, WA 98370
Phone (360) 626-0221 *Fax (360) 205-0691

1 Upon completion of the school year, the children shall reside with the except for the
2 following days and times when the children will reside with or be with the other parent:

3 Other:

4 RESERVED.

5 **3.6 Vacation With Parents**

6 The schedule for vacation with parents is as follows:

7 RESERVED.

8 **3.7 Schedule for Holidays**

9 The residential schedule for the children for the holidays listed below is as follows:

10 With Petitioner
(Specify Year
Odd/Even/Every)

With Respondent
(Specify Year
Odd/Even/Every)

11
12 New Year's Day
Martin Luther King Day
13 Presidents' Day
Memorial Day
14 July 4th
Labor Day
15 Veterans' Day
Thanksgiving Day
16 Christmas Eve
Christmas Day

17 Other:

18 RESERVED.

19
20 **3.8 Schedule for Special Occasions**

21 The residential schedule for the children for the following special occasions (for
22 example, birthdays) is as follows:

23 With Petitioner
(Specify Year
Odd/Even/Every)

With Respondent
(Specify Year
Odd/Even/Every)

24 Mother's Day

Father's Day

Other:

RESERVED.

3.9 Priorities Under the Residential Schedule

RESERVED.

3.10 Restrictions

Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

3.11 Transportation Arrangements

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the children between parents shall be as follows:

RESERVED.

3.12 Designation of Custodian

The children named in this parenting plan are scheduled to reside the majority of the time with the petitioner. This parent is designated the custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 Other

The children shall have frequent and liberal communications with the respondent via reasonable means to occur no less than 2 times per week and one time each weekend. This shall include telephone, Skype, Facetime if available, and mail. The communications shall be supervised by the childrens' counselor or other qualified non-party as agreed by the parents. This parenting plan shall be reviewed after 6 weeks to determine whether additional or unsupervised communications shall be appropriate. If the parties cannot agree to additional or unsupervised communications, the respondent shall set the matter for a hearing.

3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the child resides a majority of the time plans to move, that

1 person shall give notice to every person entitled to court ordered time with the child.

2 If the move is outside the child's school district, the relocating person must give notice
3 by personal service or by mail requiring a return receipt. This notice must be at least 60
4 days before the intended move. If the relocating person could not have known about
5 the move in time to give 60 days' notice, that person must give notice within 5 days after
6 learning of the move. The notice must contain the information required in RCW
7 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

8 If the move is within the same school district, the relocating person must provide actual
9 notice by any reasonable means. A person entitled to time with the child may not object
10 to the move but may ask for modification under RCW 26.09.260.

11 Notice may be delayed for 21 days if the relocating person is entering a domestic
12 violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health
13 and safety.

14 If information is protected under a court order or the address confidentiality program, it
15 may be withheld from the notice.

16 A relocating person may ask the court to waive any notice requirements that may put
17 the health and safety of a person or a child at risk.

18 Failure to give the required notice may be grounds for sanctions, including contempt.

19 **If no objection is filed within 30 days after service of the notice of intended
20 relocation, the relocation will be permitted and the proposed revised residential
21 schedule may be confirmed.**

22 A person entitled to time with a child under a court order can file an objection to the
23 child's relocation whether or not he or she received proper notice.

24 An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700,
25 (Objection to Relocation/Petition for Modification of Custody Decree/Parenting
Plan/Residential Schedule). The objection must be served on all persons entitled to time
with the child.

The relocating person shall not move the child during the time for objection unless: (a)
the delayed notice provisions apply; or (b) a court order allows the move.

If the objecting person schedules a hearing for a date within 15 days of timely service of
the objection, the relocating person shall not move the child before the hearing unless
there is a clear, immediate and unreasonable risk to the health or safety of a person or a
child.

IV. Decision Making

4.1 Day-to-Day Decisions

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WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.181; .187; .194

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19717 Front Street * PO Box 2520
Poulsbo, WA 98370
Phone (360) 626-0221 *Fax (360) 205-0691

Each parent shall make decisions regarding the day-to-day care and control of each child while the children are residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children.

4.2 Major Decisions

Major decisions regarding each child shall be made as follows:

Education decisions: joint

Non-emergency health care: joint

Religious upbringing: joint

4.3 Restrictions in Decision Making

Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

V. Dispute Resolution

The purpose of this dispute resolution process is to resolve disagreements about carrying out this parenting plan. This dispute resolution process may, and under some local court rules or the provisions of this plan must, be used before filing a petition to modify the plan or a motion for contempt for failing to follow the plan.

No dispute resolution process, except court action is ordered.

VI. Other Provisions

There are the following other provisions:

Change of address. Each parent shall provide the other with the address and phone number of his or her residence and shall update such information promptly when there is a change.

Communication between parents. Communication between parents may be by phone, text or in writing (email is acceptable). Each parent shall provide and update as necessary their email addresses.

Access to information. Each parent shall have the right of equal access to all of the child's medical, psychological, psychiatric, counseling, criminal, juvenile, and educational records and to any other information relevant to the child's best interests or welfare - including, but not limited to, any records kept of maintained by the State of

1 Washington, the Department of Health and Social Services, and Child Protective
2 Services. If a release is required by either parent to accomodate this access, that parent
is required to execute such releases immediately upon request of the other parent.

3 Any third party having or maintaining any such records is hereby authorized to release
4 any and all information upon presentation of this Order by a names parent herein,
5 without the necessity of a court order or subpoena duces tecum. Any person, including
6 but not limited to, physician, psychologist, psychiatrist, counselor, officer, or educator,
may and shall speak candidly concerning the child named herein to either of the above
named parents upon presentation of this Order, without court order or subpoena.

7 Children's involvement. Neither parent shall ask the child to make decisions or requests
8 involving the residential schedule. Neither parent shall dicuss with the child changes to
the residential schedule which have not been agreed to by both parents in advance.
9 Neither parent shall advise the child of the status of child support payments or other
10 legal matters regarding the parents' relationship. Neither parent shall use the child,
directly or indirectly, to gather information about the other parent or to take verbal
messages to the other parent.

11 Derrogatory comments. Neither parent shall make desparaging or derogatory
12 comments about the other parent or the child's other siblings or allow anyone else to do
the same in the child's presence. Neither parent shall allow or encourage the child to
make such comments about the other parent.

13 Notification. Each parent shall notify the other parent within 24 hours of receipt of
14 extraordinary information regarding the child, such as emergency medical care, major
school discipline, unusual or unexplained absence from the home, or contact with the
15 police or other legal authority.

16 Grievances. Each parent agrees to encourage the child to discuss a grievance with a
parent directly with that parent in question. It is the intent of both parents to encourage
17 a direct child-parent bond.

18 International travel. Any parent wishing to travel with the child internationally to a
country that is not a signatory to the Hague Convention on the Civil Aspects of
19 International Child Abduction may only do so with express, written consent from the
other parent or court order. Additionally, the parent wishing to so travel must advise the
20 other parent in writing no later than 60 days prior to the intended travel, providing a
proposed itinerary and contact infromation for each day out of the country. The U.S. is
21 the habitual residence of the child and a refusal to return the child ot the U.S. by either
parent shall be conclusively deemed wrongful under the Convention.

22 The parents recognize that this Parenting Plan does not and cannot delineate all
23 aspects of their child rearing rights and responsibilities. Therefore, the parents agree to
use the Parenting Plan as a framework for the interactions concerning the child. The
24 parents further agree to operate in all respects in good faith towards one another in the
best interests of the child. The parents further recognize that if a parent fails to comply
with the provisions of the Parenting Plan, the other parent's obligations under the

Parenting Plan are no affected.

Vehicles. Neither parent shall drive with the child or allow anyone to drive with the child without a valid driver's license, insurance and appropriate child restraints. Proof of current license and insurance shall be provided upon reasonable request. Neither parent shall drive with the child or allow anyone to drive with the child after consuming alcohol.

Hygiene. Each parent shall utilize proper bathing, showering and general hygiene practices with the child. Each parent shall ensure the child is properly bathed while the child is enjoying residential time with that parent.

Inappropriate materials. Neither parent shall watch or display any obscene or inappropriate materials or media while the child is enjoying residential time with that parent.

Child's Health Care. While non-emergency health care decisions are to be made jointly, it shall be up to the parent who takes the child or makes the appointment to take the child to a health care provider, nutritionist, or any other health care specialist to inform the other parent of the appointment, including the name of the provider and location, and provide the results of any such appointment to the other parent.

VII. Declaration for Proposed Parenting Plan

(Only sign if this is a proposed parenting plan.) I declare under penalty of perjury under the laws of the State of Washington that this plan has been proposed in good faith and that the statements in Part II of this Plan are true and correct.

Petitioner

Date and Place of Signature

HAROLD DAN SHERWOOD
Respondent

9-4-14 Davenport, IA
Date and Place of Signature

VIII. Order by the Court

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

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FF 01.0400 Mandatorv (6/2008) - RCW 26.09.181: .187: .194

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1 When mutual decision making is designated but cannot be achieved, the parties shall make a
2 good faith effort to resolve the issue through the dispute resolution process.

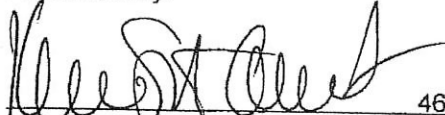
3 If a parent fails to comply with a provision of this plan, the other parent's obligations under the
4 plan are not affected.

5 Dated: _____

6 **Judge/Commissioner**

7 Presented by:

8 Approved for entry:

9  46464

10 Kimberly Hammit

11 Signature of Party or Lawyer/WSBA No.

12 _____ 27983

13 J. Anne Redford-Hall

14 Signature of Party or Lawyer/WSBA No.

1
2
3
4
5 IN THE SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

6
7 In re the Marriage of:

NO. 14 3 00303 5

8 BEVERLY DARLENE VAN SANTFORD,

9 Petitioner,

GR 17 DECLARATION

10 vs.

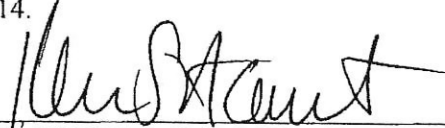
11 HAROLD DAN SHERWOOD,

12 Respondent.

13 KIMBERLY S. HAMMIT declares and states as follow:

- 14 1. I am the attorney at Law Office of Kimberly S. Hammit, PLLC
- 15 2. The attached document is entitled proposed temporary parenting plan.
- 16 3. I have examined the attached document, which consists of 9 pages, and it is
- 17 complete and legible.
- 18 4. I declare under penalty of perjury under the laws of the State of Washington
- 19 that the foregoing is true and correct.
- 20

21 DATED this 4th day of September, 2014.

22 
23 KIMBERLY S. HAMMIT, WSBA #46464
24 Of Law Office of Kimberly S. Hammit, PLLC
25 Attorney for Respondent